



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

ROBERT L. MAGETTE

Permit No. VA0088072

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Robert L. Magette, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES Permit VA0088072, which became effective January 12, 2004, and expires on January 11, 2009.
9. "Carrollton Court" means Carrollton Court Housing Complex owned and operated by Robert L. Magette.
10. "Mr. Magette" means Robert L. Magette who owns and operates the Carrollton Court Housing Complex.

SECTION C: Finding of Facts and Conclusions of Law

1. Mr. Magette owns and operates the Carrollton Court wastewater treatment plant located at Nike Park Road, Carrollton in Isle of Wight County ("facility"), which serves a small housing complex of 14 single-family homes. The Permit authorizes Mr. Magette to discharge treated wastewater via outfall 001.
2. On March 15, 2005, DEQ Compliance Staff ("Staff") conducted a routine inspection of the facility and documented deficiencies, which included the following: (a) The overall condition of the facility was poor, with treatment process equipment either not working or not maintained. Staff observed turbid effluent which contained solids; the head of the plant had dead spots with a build up of solids; the clarifier and clarifier weir were covered with solids; wastewater treatment plant alarms were not operational; outfall 001 was neither visible nor accessible. (b) Staff conducted analysis of the facilities effluent for total kjeldahl nitrogen ("TKN") and total suspended solids ("TSS") which indicated exceedances of the maximum concentration for both TKN and TSS. (c) There was no indication that the operator was performing and/or documenting the operation and monitoring tests as required by sections four and six of the approved Operation and Maintenance ("O & M") Manual. (d) Laboratory procedures and equipment at the plant do not reflect the laboratory procedures and equipment outlined in the approved O & M Manual. Additionally, Staff noted that the plant is being run by an operator in training with limited oversight by the contract operator.
3. Between November 2004 and April 2005, Mr. Magette submitted to DEQ, discharge monitoring reports ("DMR") which indicated exceedances of the maximum and average loading and concentration limits for TSS, TKN, carbonaceous biochemical oxygen demand ("CBOD₅"), and fecal coliform as follows:

Monitoring Period	Loading/Concentration	Parameter	Permit Limit	Reported
NOV 2004	Average Concentration	TKN	3.0 mg/l	4.1 mg/l
NOV 2004	Maximum Loading	TSS	0.21 kg/d	0.31 kg/d
NOV 2004	Maximum Concentration	TSS	15 mg/l	27 mg/l
NOV 2004	Average Loading	TSS	0.14 kg/d	0.31 kg/d
NOV 2004	Average Concentration	TSS	10 mg/l	27 mg/l
DEC 2004	Average Concentration	CBOD ₅	10 mg/l	12 mg/l
DEC 2004	Maximum Concentration	TSS	15 mg/l	24 mg/l
DEC 2004	Average Loading	TSS	0.14 kg/d	0.27 kg/d
DEC 2004	Average Concentration	TSS	10 mg/l	24 mg/l
DEC 2004	Maximum Loading	TSS	0.21 kg/d	0.27 kg/d
FEB 2005	Average Concentration	TKN	3.0 mg/l	3.5 mg/l
FEB 2005	Average Concentration	TSS	10 mg/l	11 mg/l
MAR 2005	Maximum Concentration (Field Test)	TSS	15 mg/l	50 mg/l
MAR 2005	Maximum Concentration (Field Test)	TKN	4.5 mg/l	6.8 mg/l
MAR 2005	Average Concentration	Fecal Coliform	200 n/cml	900 n/cml

4. Part II.Q of the Permit specifies that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control to achieve and maintain compliance with the Permit conditions. Mr. Magette violated the Permit by failing to properly operate and maintain the facility resulting in Permit effluent exceedances. Components of the facility's system showed evidence of equipment failure and/or inadequate maintenance, which was indicated by the poor condition of the facility and poor effluent quality observed by Staff.
5. Part I.D.5 of the Permit requires the permittee to review the existing O & M Manual and notify the DEQ Regional Office in writing by April 12, 2004, that the O & M Manual is still current. If the O & M Manual is no longer current, a revised O & M Manual must be submitted for approval to the DEQ Regional Office within 90 days of the changes. Mr. Magette violated the Permit by failing to revise the O & M Manual to reflect the current laboratory procedures and equipment at the facility, and by failing to submit a revised O & M Manual to DEQ Regional Office for review and approval.
6. Part I.A of the Permit includes maximum and average loading and concentration limits for TSS, TKN, CBOD₅, and fecal coliform. Mr. Magette violated the Permit by exceeding the maximum and average loading and concentration limits for TSS and TKN, and the average concentration limit for CBOD₅ and fecal coliform.
7. On April 25, 2005, DEQ issued Notice of Violation ("NOV") W2005-03-T-0004 to Mr. Magette, advising Mr. Magette of the deficiencies referenced in paragraphs two and three of this Order and applicable regulatory and permit citations. On

May 10, 2005, DEQ issued NOV W2005-05-T-0001 to Mr. Magette, advising Mr. Magette of the Permit limit exceedance for fecal coliform and applicable regulatory and permit citations.

8. On May 11, 2005, DEQ received a response to the NOV issued April 25, 2005, from the contract operator Mr. Robert Finch, on behalf of Mr. Magette. The response outlined a timeline for corrective actions which included a schedule to either replace or repair failing equipment, provide additional training to the operator in training and submit to DEQ, an updated O & M Manual for review and approval.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Magette, and Mr. Magette agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Magette, and Mr. Magette voluntarily agrees to pay a civil charge of \$5,500 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Mr. Magette's social security number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Magette, for good cause shown by Mr. Magette, or on his own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Magette admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Magette consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Magette declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Magette to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Magette shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mr. Magette shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Magette shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Mr. Magette intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Magette. Notwithstanding the foregoing, Mr. Magette agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or his sole discretion upon 30 days written notice to Mr. Magette. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Magette from his obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By his signature below, Mr. Magette voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2007.

for DAVID K. PAYLOR

Francis L. Daniel
Francis L. Daniel, Tidewater Regional Director
for ~~Robert G. Burnley~~, Director
Department of Environmental Quality

Robert L. Magette voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 11/29/05

Commonwealth of Virginia

City/County of Salem of Va

The foregoing document was signed and acknowledged before me this 29th day of November, 2005, by Mr. Robert L. Magette.

Melinda B. Reynolds
Notary Public

My commission expires: May 31, 2007

APPENDIX A

Mr. Magette shall:

1. Update the O & M Manual to reflect the current facility operations. Submit to DEQ Tidewater Regional Office, the revised O & M Manual for review and approval within 30 days of the effective date of this Order.
2. Provide training to the operator in training which shall include guidance regarding the following topics:
 - a. current Permit requirements, including Permit limitations and monitoring requirements
 - b. practices necessary to achieve compliance with the Permit
 - c. proper plant operation and maintenance procedures
 - d. laboratory equipment and procedures
3. Submit to DEQ Tidewater Regional Office, verification of completion of staff training within 90 days of the effective date of this Order.
4. Within 30 days of the effective date of this Order, submit to DEQ Tidewater Regional Office for its review and approval, a corrective action plan and schedule to repair/replace malfunctioning treatment process equipment and to address the effluent limit violations referenced in paragraph three of Section C of this Order. Upon approval, the corrective action plan and schedule shall become a part of this Order and enforceable under the terms of this Order.
5. Implement and complete the corrective action plan and schedule as approved by DEQ.
6. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director
Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, VA 23462